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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.M.C. 4637-38/2005

July 26, 2007

GANGA CONTRACTS & PROJECTS LTD. ..... Petitioner
Through none

versus

STATE & ANR. ..... Respondents
Through Mr. Ajit Warrier, Advocate for R-2.

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

Mr. Justice S. Ravindra Bhat (Open Court)

1. None present for the petitioner. On the last date of hearing, the matter was adjourned on account of bereavement in the family of the petitioner's counsel.

2. In these proceedings under Section 482 Cr.P.C. a quashing order in respect of the criminal complaint filed by the second respondent (hereafter referred to as the "complainant") who alleged that the petitioner had committed offences punishable under Section 138, Negotiable Instruments Act (hereafter "the Act")

has been sought.

3. The complainant approached the criminal Court alleging that cheques issued by the present petitioner some time in 2001, were dishonoured. Complaint proceedings were initiated; the Metropolitan Magistrate issued a summoning order. In the course of those proceedings (being complainant No. 397/1/2) the parties apparently arrived at a compromise and settlement. In terms of the settlement, fresh cheques were issued by the present petitioner to the complainant. However, those cheques upon presentation too were dishonoured. The Court, therefore, recorded the factum of settlement and dismissed the complaint case No. 397/1/02.

4. After dishonour of the cheques issued as part of the compromise, the complainant issued fresh notices calling upon the petitioner to satisfy its demand; on non-compliance with the notice, the second proceedings alleging commission of offences under Section 138/141 of the Act were filed being criminal complaint No. 579/2005.

5. The principal theme of this petition is that the complaint is not maintainable since it pertains to the same cause of action inasmuch as the legal liability is identical with the subject matter of the previous proceedings. The contention sought to be advanced – as is apparent from the averments – in respect of same cause of action, two proceedings cannot lie.

6. The petitioner has relied upon a judgment of this Court reported as *Venkatesh Dutt -v- M/s M.S. Shoes East Ltd.* 2004 (II) BC 19.

7. I have considered the materials on record and heard counsel for the

respondent/complainant. The facts show that the petitioner in this case had defaulted inasmuch as the cheques earlier issued by it in satisfaction of its liabilities, were not honoured. That led to filing of a criminal complaint. During the course of those proceedings, the petitioner sought to compound the offence and issued fresh cheques. The complainant accepted those cheques and as a result the previous complaint was dismissed. However, the cheques were in satisfaction of the basic liability. When the fresh set of cheques were presented, they too were dishonoured. The question is whether the subsequent proceedings are maintainable. The petitioner contends that they are not.

8. I am of the considered opinion that the reliance placed on *Venkatesh Dutt*'s case by the petitioner is misplaced. The Court had in that case clearly stated as follows:

> *"Once the parties enter into an agreement during the pendency of such complaint or proceedings and complainant accepts the cheques given by the accused in lieu of the subject-matter of original complaint every cheque gives rise to a fresh cause of action if it, on presentation is dishonoured as in that case original complaint becomes extinct. Aggrieved person has a right to file as many complaints as may cheques were given to him as every cheque under the Act provides as independent and fresh cause of action to the aggrieved person."*

9. All that the Court was concerned with in those proceedings was whether two parallel proceedings, one relating to the original cheque and the second relating to the subsequent cheque could proceed simultaneously. The Court held that they could not. But the Court before doing so clarified that it is open to the payee of a cheque aggrieved on account of dishonour to approach the Court each time the cheque is dishonoured. The dishonour of a cheque constitutes an

independent cause of action, entitling the payee to seek recourse to summary proceedings. Any other view would defeat the objectives of the Act, by importing considerations which are unsupported by the statute and its plain terms; it would aid the canny and unscrupulous drawer adopting the stratagem of a pretended compromise.

10. In view of the above discussion, I am of the opinion that this petition is not maintainable. It is accordingly dismissed.

S. RAVINDRA BHAT,J

JULY 26, 2007
as